United Nations CCPR/C/SR.3069

International Covenant on Civil and Political Rights

Distr.: General
11 July 2014

Original: English

Human Rights Committee
111th session

Summary record of the 3069th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 8 July 2014, at 10 a.m.

Chairperson: Sir Nigel Rodley

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Sixth periodic report of Chile (continued) (CCPR/C/CHL/6; CCPR/C/CHL/Q/6 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Chile took places at the Committee table.*

2. **Mr. Quezada** (Chile) said that although, over the past two years, the Criminal Chamber of the Supreme Court had tended not to apply a statute of limitations to crimes against humanity, it had done so in some cases involving the summary execution of persons for political reasons during the military dictatorship.

3. The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity had been before parliament for a number of years. It had been approved by the Senate and was under consideration in the Chamber of Deputies. The Government had pledged to ratify the Convention in the near future.

4. **Ms. Badilla** (Chile) said that the Office of the Minister and Secretary-General of Government was reviewing the Anti-Discrimination Act and contemplating possible amendments. While the Act took account of gender identity, a bill submitted in 2013 addressed the issue more directly with a view to providing appropriate protection through the establishment of an effective regulatory framework incorporating, inter alia, the Yogyakarta Principles. The bill, which was currently before the Senate, would enable people to change their name and gender in the records of the Civil Registry and Identity Service without having to undergo a medical examination.

5. Regarding the situation of transsexual detainees, the Prison Service was working with transgender organizations, notably the Amanda Jofré Union, to respond to complaints and tackle issues that had arisen. The recently created Unit for the Promotion and Protection of Human Rights within the Prison Service aimed to set up differentiated procedures for transsexual detainees and organize workshops on gender identity for prison staff.

6. Concerning the reference, in article 373 of the Criminal Code, to penalties for individuals who committed offences against public morals or decency, she said that a new Code was being drafted in which that legal concept would no longer feature.

7. **Mr. Muñoz** (Chile) said that, since 2013, the training provided to carabineros had emphasized the obligation to treat lesbian, gay, bisexual and transgender (LGBT) individuals with respect, and to ensure that searches of transsexual detainees following their arrest were conducted by officers of the gender with which those persons identified.

8. **Ms. Ortiz** (Chile) said that 86.3 per cent of town councils in Chile made day-after contraceptive pills available to women, despite the fact that many mayors had initially been opposed to the idea.

9. **Mr. Flinterman** asked whether the reasons that had prompted the State party to make a declaration relating to the First Optional Protocol and a reservation to the Second Optional Protocol were still valid and, if not, whether it would consider withdrawing them. Such a decision would be particularly welcome on the twenty-fifth anniversary of the adoption of the Second Optional Protocol.

10. **Mr. Shany** sought clarification on whether the new Act on abortion would contain an exception for pregnancies resulting from incest, and whether abortions in exceptional cases would be legalized or simply decriminalized.

11. **Mr. Seetulsingh** requested the delegation to supply the latest figures for the total land acquired each year by the National Indigenous Development Corporation.

12. **Mr. Salvioli** asked the delegation to provide concrete examples of cases in which the Covenant had been applied in Chile. Regarding the obstacles to repealing the Amnesty Decree-Law (No. 2,191) cited by the delegation, he said that the State party should refer to the judgement of the Inter-American Court of Human Rights in the case of *Almonacid Arellano et al. v. Chile* when deciding how to proceed on the matter.

13. Turning to the issue of reparation for victims of torture, he wished to know whether the State party would consider reopening its official list of victims of the dictatorship in order to allow those who had not yet come forward to receive the same support and access to redress as other victims.

14. Lastly, he asked whether the Ministry of Health had established a protocol to ensure that intersex children were not subjected to mutilation, and whether the Ministry of Education had a protocol for the integration of children of different sexualities and genders.

15. **The Chairperson**, speaking as a member of the Committee, asked whether the effect of ratifying the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity would be to guarantee that crimes committed prior to ratification remained actionable.

16. **Mr. Neuman** said that he would appreciate more detailed information on standards of oversight of private security companies, many of which had limited financial and managerial capacity. He asked whether the Government was aware of the fact that such companies were arresting and detaining people in urban areas without authorization and, if so, what measures it was taking to address the issue.

17. Referring to the table in paragraph 85 of the State party's reply to the list of issues (CCPR/C/CHL/Q/6/Add.1), he wished to know why solitary confinement appeared to be so prevalent. Noting that the maximum permissible length of that measure was 10 days, he asked whether, on completion, it could be renewed by a judge, and whether there was an annual limit on its use. The delegation should indicate what measures, if any, were being adopted to reduce reliance on solitary confinement. He asked whether it was true that a substantial proportion of deaths in prison were the result of inter-prisoner violence, what steps were being taken to prevent such violence aside from efforts to reduce overcrowding, and what was being done to prevent suicides.

18. He invited the delegation to comment on reports that military jurisdiction had been exercised in cases involving civilians after the promulgation of Act No. 20,447 on 30 December 2010, including in cases involving carabineros. He asked whether the State party intended to make additional amendments to its legislation in order to further limit the jurisdiction of military courts.

19. Turning to the issue of justice for young offenders, he invited the delegation to comment on reports that there were no specialized judges or prosecutors for offenders between the ages of 14 and 18, that expertise was not being brought to bear during trials, in which the adversarial system continued to be used, that there was an absence of expertise in the supervision of the execution of sentences, and that there were few lawyers specialized in the representation of adolescents. The delegation should also describe the efforts being made to ensure that the pretrial detention of juveniles was ordered only as a last resort.

20. Lastly, he asked whether the Government planned to make the legal amendments necessary to ensure respect for the right to conscientious objection to military service, as required by the Covenant, particularly given that the number of volunteers for military service was declining and that conscription might therefore become necessary.

21. **Mr. Rodríguez-Rescia** sought clarification on the status of the national mechanism for the prevention of torture, which had reportedly still not been set up because of the need to allocate budgetary and human resources within the National Human Rights Institute.

22. While welcoming the measures adopted to ensure that the Counter-Terrorism Act (No. 18,314) was not applied in a discriminatory manner to members of the Mapuche community, he said that, in the light of reports that evidence obtained through the Act had been used in three cases involving such members, it was clear that the Act contravened the Covenant and needed to be amended.

23. **Mr. Shany** enquired whether the national plan of action on trafficking in persons had been adopted by the Government, whether a budget had been allocated for its implementation, and whether the framework agreement mentioned in paragraph 84 of the State party's reply to the list of issues had been signed. The delegation should indicate whether the plan of action addressed the issue of male victims, and whether the points raised by the Committee on the Elimination of Discrimination against Women in its concluding observations on the fifth and sixth periodic reports of Chile (CEDAW/C/CHL/CO/5-6) had been incorporated, particularly those relating to preventive measures, the identification of victims and rehabilitation programmes.

24. He wished to know what legal framework was applied to cases of internal trafficking in persons, which were not covered by Act No. 20,507 of 1 April 2011. The delegation should also indicate what specific measures were being taken to address the issue, whether the application of general criminal law in cases of sexual exploitation arising in relation to internal trafficking was commensurate with the gravity of the offence, and what measures, if any, were being taken to identify victims among vulnerable population groups. He asked what services were provided to victims who assisted with trafficking investigations, what the budgetary allocation for such services was, and what support was offered to persons who were initially unwilling to collaborate. It would also be useful to know what measures were being taken to protect the confidentiality of victims, and to what extent there was a conflict between the assistance provided to victims and the obligation of public officials to report crimes of which they had knowledge.

25. The delegation should explain what steps had been taken to improve the collection of data on trafficking in order to more accurately assess the scope and nature of the problem, and comment on the availability of training for State officials involved in the fight against trafficking, including members of the National Service for Minors and the Investigative Police.

26. With reference to the 11-point plan mentioned in paragraph 88 of the State party's reply to the list of issues, he asked whether any specific benchmarks had been set in that regard and whether a budget had been allocated for its implementation. He enquired what measures had been taken to improve prison conditions, including replacing inadequate heating, lighting, ventilation and access to drinking water. Further details were requested regarding the transfer of prisoners, including the prisons to which they were moved and the effects on those prisons.

27. He requested updated information on the progress of the bill on migration. He asked whether that bill facilitated the expulsion of migrants from the State party, ensured individual assessment of cases and established a preference for non-custodial measures. How much time did the bill afford migrants who challenged an expulsion order and was access to counsel provided during that time? Further information was requested on the average time a migrant could be held in detention pending the execution of an expulsion order, the limit on waiting time, and the legal criteria for extending the 24-hour detention period. The Committee would also welcome information on plans to abolish the practice of confiscating migrant workers' identity documents if they violated migration laws, and on

the length and conditions of pretrial administrative custody of migrant workers held for infringing migration laws.

28. **Ms. Chanet** expressed the hope that the Committee's recommendations would be taken into account in the review of the legislation concerning discrimination. She requested clarification of the procedures to be followed by law enforcement officials, including between the time of a person's arrest and that person's appearance before a judge; procedures following the execution of an arrest warrant, including the suspect's court appearance; the detainee's access to counsel; and procedures for cases of illegal detention. While she welcomed preventive measures, further information would be appreciated on disciplinary and/or criminal sanctions imposed on police officers found responsible for using violence. In the light of reports of law enforcement officials using violence against demonstrators, in particular in a case in 2011 involving minors, she asked whether legal action had been taken to investigate and prosecute those involved.

29. **Mr. Salvioli** asked how the offence of disorderly conduct was dealt with in view of the need to guarantee freedom of opinion and peaceful assembly. He enquired whether minority groups and civil society had participated in the process of preparing the periodic report. Lastly, given that crimes such as enforced disappearance continued to be committed, he invited the delegation to comment on the application of a statute of limitations to certain offences and the consequent risk of lesser sentences being imposed for serious offences.

30. **Mr. Seetulsingh** asked whether the National Human Rights Institute constituted the State party's national preventive mechanism. Regarding juvenile justice, he would like to know whether disaggregated data on detained juveniles were available. how many detained juveniles were from the Mapuche community, what offences juveniles were detained for, and whether such juveniles included street children. Disaggregated data were crucial to determine the causes and possible solutions of the problem.

31. **Mr. Bouzid** expressed concern at the decline in civil society organizations in recent years due to a lack of funding and asked whether the State party planned to allocate resources to such organizations.

The meeting was suspended at 11.20 a.m. and resumed at 11.40 a.m.

32. **Mr. Riveros** (Chile) said that the reservation to the First Optional Protocol to the Covenant reaffirmed the principle of non-retroactivity as set out in the Vienna Convention on the Law of Treaties. Given that the reservation had an impact on the reporting of acts committed in the dictatorship era, the State party could envisage discussion of the reservation but its withdrawal was subject to approval by Congress.

33. The reservation to the Second Optional Protocol had been made in view of specific provisions in the Code of Military Justice and the Constitution, under which the death penalty could still be imposed, notably for acts of treason in war time. The forthcoming revision of the Constitution would include that reservation. The death penalty had, however, been withdrawn from the Criminal Code and was therefore not part of the State party's general criminal law. Progress was being made towards full abolition of the death penalty.

34. The Government intended to set up a permanent mechanism to offer redress to persons who had been subjected to torture during the dictatorship. However, the Commission on Political Prisoners and Torture and its successor, the Advisory Commission, had already provided for an extended period in which cases of torture could be reported. New cases of political prisoners who had disappeared or been executed during the dictatorship had thereby been identified. In cases involving crimes against humanity and war crimes, the courts directly applied constitutional law, which covered those crimes, and the Geneva Conventions of 1949. Furthermore, the absence of a law of due obedience in

Chile had made it possible for the justice system to initiate proceedings for crimes against humanity committed during the dictatorship.

35. **Ms. Silva** (Chile) said that her Government was introducing extensive programmes covering issues raised by the Committee and responding to calls from civil society. It was currently considering the decriminalization of abortion in cases of rape, non-development of the foetus and where the life of the mother was at risk. A bill on reproductive rights was also under consideration and would cover access to sexual health education and services. Regarding confidentiality, the Government was committed to a review of the relevant Act, which currently established that documents and testimonies relating to the dictatorship era and entrusted to the authorities should remain confidential for a period of 50 years. The review would include discussions with victims in an effort to build collective memory.

36. **Mr. Quezada** (Chile) said that since 2002 the statute of limitations had been applied predominantly in cases of execution of political prisoners. The statute was rarely applied in cases of enforced disappearance since it was difficult to determine a date for the commission of the crime. The Government acted on behalf of the victims and their families in ensuring non-application of the statute of limitations or amnesty, and in that connection three bills currently before Congress related to the interpretation of the Criminal Code with regard to crimes against humanity.

37. **Ms. Cabellos** (Chile) said that the national plan of action on trafficking in persons had been adopted in December 2013, and aimed at preventing and prosecuting such trafficking and training officials to identify victims and provide them with assistance. A review of migration laws was also under way with the aim of regularizing the situation of victims of trafficking, thereby entitling them to residency and providing access to housing, work and psychosocial services. More data were needed in order to monitor the crime of trafficking in persons and reports had been commissioned in that regard. Awareness of trafficking was also being raised among the general public with a view to prevention and victim identification. Internal trafficking was covered by the Act on trafficking in persons. Budget allocations were made from all governmental ministries involved.

38. The bill on migration and aliens was in its first reading in the Chamber of Deputies. It focused on the protection and integration of migrants, including the employment of migrants, ensuring due legal process, and harmonizing provisions with legislation on refugees and citizenship. Furthermore, the bill envisaged the granting of citizenship to children of migrants by separating that issue from that of the irregular situation of migrants. The Aliens Act currently provided for the confiscation of the identity documents of a migrant worker not in compliance with migration laws as a temporary measure before sanctions were imposed. However, the bill on migration envisaged prohibiting authorities from confiscating migrant workers' identity documents issued in their country of origin. As of March 2013, under a ruling by the Santiago Court of Appeal, the deprivation of freedom of migrants could not exceed 24 hours. In cases where a migrant had appealed against an expulsion order, the law provided that he or she could be detained for up to 5 days and that a decision be taken within that time.

39. **Mr. Muñoz** (Chile) said that the Corps of Carabineros was responsible for ensuring compliance with security regulations. It was a military institution under the law and thus subject to criminal military law. Public demonstrations were not prohibited or punished in the State party. The Carabineros intervened where necessary to maintain public order during unlawful assemblies. The use of force by the Carabineros was regulated by the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), which allowed such officials to employ proportional force.

40. **Mr. Yáñez Villegas** (Chile) said that a person could be arrested on the basis of a warrant issued by a judge following an application by the public prosecution service. Upon

arrest, the person's rights were explained and he or she was taken to a police station. The arrest was then verified by the public prosecution service and the Guarantees Court. A person could not be detained for more than 24 hours. The rights read out by the police included the right to see a lawyer. A detainee could also choose a family member with whom to get in touch.

41. **Ms. Labraña** (Chile) said that, since 2005, special arrangements had been in place for children in conflict with the law. Manuals were issued and workshops organized for lawyers, administrative staff and other professionals in order to ensure that the Convention on the Rights of the Child was fully observed. In May 2014, the National Service for Minors had launched a scheme for lawyers to be trained in juvenile justice and the first 20 specialist lawyers would have been trained by the end of the year.

42. With regard to the question about precautionary measures, she said that in 2013 there had been 51,700 criminal proceedings involving children and young people, and precautionary measures had been applied in 1,700 cases, mostly involving repeat offenders or those who had committed serious offences. As of 31 December 2013, 9,701 young offenders had been serving sentences in closed or semi-closed institutions, while 7 per cent had been serving alternative penalties, which marked a new approach to juvenile justice in Chile.

43. Referring to the question of the types of offences committed by young indigenous people, she said that the incidence of offences against property was lower among persons from the Mapuche community, but that of offences against the person, the family or public order was higher. Of sentences currently being served by Mapuches, 398 related to offences against property, 50 to offences against the person, 44 to offences against the family, sexual inviolability and public morality, 25 to drug trafficking and 15 to offences against public order. No one had been convicted under the Counter-Terrorism Act.

44. **Ms. Badilla** (Chile) said that, since July 2013, the Ministry of Justice had been holding a technical round table on establishing a national mechanism for the prevention of torture. The round table would become a standing body, with a full budget, before the end of the term of the current Government and would work to revise the legislation on torture in line with international standards and principles.

45. Replying to the question about prison conditions, she said that in 2013, in response to concerns about disciplinary procedures, new guidelines had been issued on the application of sanctions and on the use of solitary confinement. As a result, there had been a 52 per cent reduction in the number of prisoners held in solitary confinement between 2012 and 2013 — 14,997, as against 28,000 — and the number of days served was also lower. Solitary confinement was used only for very serious offences and only as a last resort. The numbers had declined further in the first half of 2014.

46. As to plans for improving prison conditions in the areas of health, food, lighting and heating, she said that US$ 7.4 million was to be invested. The sum of US$ 44 million had already been allocated to improving infrastructure and security in prisons. The problem of overcrowding would be alleviated by the building of new prisons.

47. **Mr. Alvarez** (Chile) said, with regard to the question of the political will of the State concerning conscientious objection, that the armed forces were manned by volunteers. He recalled that descendants of victims of the dictatorship between 1973 and 1990 were, if they wished to be, exempt from military service. At the same time, the armed forces had to meet the country's defence needs, even though those needs were diminishing. His Government would, however, bear in mind the Committee's comments on the treatment of conscientious objectors.

48. On the question about police violence in the context of social protest by members of the Mapuche community, he said that it was difficult to determine the extent to which the use of force by the police was excessive, given that social protest had intensified since May 2011. However, guidelines on the use of force had been issued and it should be borne in mind that a number of police officers had been convicted of the deaths of protesters by military courts. The Government had announced that it would no longer use the Counter-Terrorism Act in dealing with social protest, especially among the Mapuche community. A committee of experts had been set up to examine the situation and to update the law in line with international human rights standards. The Government's guiding principles were to avoid criminalizing social protest, to respect the principle of legality and to apply the Counter-Terrorism Act only in the case of serious offences.

49. **Ms. Castañeda** (Chile) said, with regard to the question concerning ancestral lands, that the decrease in land purchases between 2010 and 2013 was due to the fact that a review of the purchasing process had been carried out at the end of the previous Government, so no purchases had been made at all in 2010. By the end of 2013, purchases had risen to the average level.

50. **Ms. Silva** (Chile) said that health guidelines relating to transgender persons were currently being drawn up. The Government wished to improve standards, but it had not been in office for long and there was much to do.

51. **Mr. Salvioli** said that he did not concur with the delegation's assessment of the level of repression of social protests. Not only had Ms. Chanet given examples of excessive police violence in her remarks to the delegation but the Human Rights Watch World Report 2013 cited a number of examples and eight States had expressed concern over the use of force in Chile, as was made clear in the report of the Working Group on the Universal Periodic Review (A/HRC/12/10). The problem must be acknowledged before it could be solved.

52. He also differed from the delegation on the question of withdrawing the reservation by Chile to the Second Optional Protocol to the Covenant. According to article 54 of the Chilean Constitution, a reservation could be withdrawn without affecting the ratification of a given treaty. If Congress did not raise an objection within a month, that reservation was tacitly withdrawn. He urged Chile to give further thought to withdrawing its reservation.

53. **Mr. Shany** asked how the rule on a maximum 5-day detention was applied in more complicated cases, such as an application for refugee status, in non-refoulement cases or where a person's documents were not in order. In such cases, it might surely take more time to ascertain a person's identity and the feasibility of expulsion.

54. **Mr. Riveros** (Chile) said that he wished to clarify the situation with regard to withdrawing a reservation. In such cases, approval by Congress was required and the matter was governed by the Congress Organization Act rather than the Constitution. If the two houses of Congress failed to agree within 30 days, a joint commission could decide. Exceptionally, a decision could be made by the Executive, but, even then, that was not possible if the Congress objected.

55. **Ms. Cabellos** (Chile) said that the time frame of 24 hours allowed for detention could be exceeded in cases where a person had submitted an appeal, for example. However, the law stated that an appeal must be heard within five days. If it was not, the person was released. In the case of refugees, the person concerned could not be expelled from the country but must be released within five days. As to the second case mentioned by Mr. Shany, the person would have been identified before being detained.

56. **Mr. Riveros** (Chile) thanked the Committee: its recommendations would help Chile improve its institutions. He also thanked the National Human Rights Institute, which was a

beacon of human rights in Chile, and all the country's other human rights organizations. Human rights could not exist unless they operated within a democracy. That was why Chile aimed to reform the Constitution, in order to create a more inclusive society.

57. **The Chairperson** said that the term "constructive dialogue" was often used euphemistically, but not in the case of the Committee's interaction with Chile. Real progress had been made; and where improvements were needed — such as the review of the electoral system — the delegation had drawn attention to them of its own accord. Abortion was another issue that remained problematic, but a bill currently before the Congress could improve the situation: women were not receptacles for carrying so-called life, regardless of the circumstances in which they had become pregnant. There also remained a residue of police violence, which must be addressed. However, setting standards was one matter and their application was another; progress would come with time. He welcomed the country's commitment to improvement.

The meeting rose at 1.05 p.m.